

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 8, 2023 at 11:30 a.m.

1. <u>18-90029-E-11</u> <u>FWP-13</u>	JEFFERY ARAMBEL Pro Se	CONTINUED MOTION TO ABANDON 4-8-21 [<u>1410</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Abandon is XXXXXXXXXXXXXXXXXX

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,

4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the “Properties”).

The Declaration of Juanita Schwarzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwarzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwarzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC (“Summit”) as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.*, ¶ 37. Ms. Schwarzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor’s Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment (“Adjustment”) process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties’ title companies and successfully recorded..

Plan Administrator’s Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; and even after abandonment, the Adjustment process may still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC (“Summit”) Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator’s proposal of temporary deferral of the Murphy Properties to a later date to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit’s rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

Bifurcated Abandonment of the Murphy Ranch Properties

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor’s consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague “the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization,” the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid “abandonment anxiety,” the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court’s September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

September 8, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

OCTOBER 17, 2022 HEARING

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

DECEMBER 15, 2022 HEARING

On December 13, 2022, Focus Management Group USA, Inc., the Chapter 11 Plan Administrator filed in updated Status Report. Dckt. 1805. The Plan Administrator reports that American AgCredit has confirmed that the issues relating to the Lot Line Adjustment have resolved and the adjustment has been completed.

The Plan Administrator reports that with that completed, the Parties can proceed with a global settlement. The Plan Administrator requests that the hearing on this Motion be continued to the court's January 26, 2023 Calendar so that the Plan Administrator and the other parties can continue with the global negotiations.

At the hearing, counsel for the Plan Administrator reported that the global settlement negotiations were proceeding and the Parties agreed to continue this hearing.

JANUARY 26, 2023 HEARING

As of the court's January 25, 2023 review of the Docket, no updated status report had been filed or information about whether the Plan Administrator would or could proceed with the abandonment.

At the January 26, 2023 hearing, counsel for the Plan Administrator reported that the timing of events have been driven by dealings with Arambel.

The Murphy Ranch property in this case is part of the global settlement in the various related cases.

The Plan Administrator requested a continuance to allow the parties to wrap up their settlement discussions.

APRIL 20, 2023 HEARING

At the hearing counsel for the Plan Administrator requested that the hearing be continued to be conducted in conjunction with the Final Hearing Scheduling Conference for the Plan Administrator's Motion to Abandon in the Filbin Land & Cattle Bankruptcy Case.

JUNE 8, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Abandon is **XXXXXXXXXXXXXX**

2. <u>18-90030-E-11</u> <u>FWP-2</u>	FILBIN LAND & CATTLE CO., INC. Michael St. James	CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN 12-9-21 <u>[522]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Order in Aid of Execution of the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry of Order in Aid of Execution of Plan is XXXXXXXXXX

REVIEW OF MOTION

On October 20, 2022, Focus Management Group, USA, the Plan Administrator in the Arambel Case, filed an updated Status Report. Dckt. 548. The Plan Administrator reports that while the parties have negotiated possible resolution terms, no settlement has been finalized. The reasons for being unable to finalize a settlement are stated to include:

- (1) the IRS inadvertently sent tax refund checks for the Arambel Plan Estate to Mr. Arambel, but Mr. Arambel has turned over those monies of the Arambel Plan Estate to the Plan Administrator;
- (2) Summit has been focused on a sale of the Business Park property that was abandoned to the Debtor in May 2021, but that sale failed in September 2022; and
- (3) Summit and Mr. Arambel are continue in their negotiations which may obviate the need for a sale of the Business Park.

The Plan Administrator requests a further continuance.

At the hearing, the Parties requested that the court to continue the hearing to 2:00 p.m. on January 26, 2023.

Much of the grounds for the continuance are stated to be based on all the work being done by Summit in working with the Jeffery Arambel to achieve a global forbearance agreement to avoid (at least for now) foreclosures by Summit.

JANUARY 26, 2023 HEARING

The court's review of the Docket in this Case on January 25, 2023, disclosed that no updated information about this Motion has been filed.

The Plan Administrator requested a continuance to allow the parties to wrap up their settlement discussions.

APRIL 20, 2023 HEARING

At the hearing, counsel for the Arambel Plan Administrator reported that no agreement has yet been reached between Summit, Mr. Arambel, and the Arambel Plan Administrator.

Counsel for Summit advised the court and Parties in Interest that Summit and Mr. Arambel have been active in their negotiations. Some complicating issues have arisen. One, is that Mr. Arambel has consented to the foreclosure on the Business Park Property, but now there is a dispute as to what constitutes the Business Park. Because this has not been resolved, an agreement cannot be made with the Arambel Plan Administrator.

Counsel for Mr. Arambel stated that nothing further to add, and they supported a continuance.

Counsel for the Arambel Plan Administrator stated that through the settlement they are trying to salvage something for the creditors with unsecured creditors. In the Filbin case, the only remaining creditor is Summit.

At the hearing, the court stated that this Motion has been pending since December 2021, when it was filed. It has been continued for more than a year, with representations that the Parties are working to resolve this matter. Though representations of active settlement discussions have been presented, those settlement discussions have failed to bear fruit.

The court notes that this situation appears to be one akin to the pre-bankruptcy dysfunction that came to light in the Arambel and Filbin Land & Cattle cases. Additionally, the dysfunction that existed in those cases when they were being prosecuted by the then debtors in possession and post-confirmation.

At this juncture, based on the failed efforts to resolve this matter over the last sixteen (16) months, the court has little confidence in the Parties to be able to resolve it consensually.

Therefore, the court sets a Scheduling Conference for a Final Hearing on this Motion Motion for Entry of Order in Aid of Execution of Plan. In their Scheduling Conference Reports the parties will provide information necessary in scheduling the Final Hearing including: (1) whether due to the passage of time any further discovery is required and specifically what that is, and (2) whether the Parties will proceed with the hearing using declarations and documentary evidence, or whether an evidentiary hearing is requested.

JUNE 8, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Order in Aid of Execution of Plan filed by Focus Management Group, USA, Inc., the Arambel Chapter 11 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion for Entry of Order in Aid of Execution of Plan is **XXXXXXXXXX**

3. <u>23-21438-E-12</u> <u>CAE-1</u> 3 thru 4	WESLEY/RUTH WOOLERY Stephen Reynolds	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-2-23 [1]
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Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 5/16/23 to be conducted in conjunction with the continued Motion to Use Cash Collateral.

First Status Conference Report filed 5/31/23 [Dckt 51]

The Status Conference is XXXXXXX
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JUNE 8, 2023 STATUS CONFERENCE

The Debtor in Possession filed Status Conference Report on May 31, 2023. Dckt. 51. In this Status Report the Debtor in Possession states that there are no significant motions to be prosecuted and that the Debtor in Possession intends to timely file a Chapter 12 Plan of Reorganization.

With respect to providing evidence that Debtor was eligible to file a case under Chapter 12, the following is stated:

The creditor meeting in this case is scheduled for June 6, 2023. Debtors are providing the Chapter 12 Trustee various documents which may provide the Trustee the information he requires to make his report regarding Chapter 12 Eligibility. The vast majority of the debt and income in this case is farm related and eligibility issues are not anticipated.

Status Report, p. 2:7-11; Dckt. 51.

Michael Meyer, the Chapter 12 Trustee, provided his Status Report, filed on June 2, 2023. Dckt. 52. The Trustee discusses the delay in Debtor in filing the required Schedules. Additionally, the Trustee states that the Debtor, who is serving as the Debtor in Possession, has not provided various documents, which is preventing the 341 Meeting of Creditors being conducted. These documents, requested on May 9, 2023, include:

- a. Last Two Years Tax Returns
- b. Bank Statements for The Last Six Months.
- c. Business Licenses
- d. Income Statement and Balance Sheets
- e. Insurance Policies
- f. Cash Flow Statements
- g. Copies of the Deed for each property owned or leased by the debtor including details as to acreage and crop status
- h. Production records with respect to growing crops. Corporate and LLC or LLLP documents.
- i. All lawsuits
- j. List of all inventory and equipment with current values dates of purchase and values when purchased
- k. List of all funds, accounts receivables, claims pending escrows, owed to the business at the time of filing.
- l. Any and all permits required to operate the business.

The Trustee notes that the Order Setting the Chapter 12 Status Conference requires the Debtor, serving as the Debtor in Possession, file with the court for the Status Conference evidence showing eligibility to file a Chapter 12 Case, not merely provide it to the Trustee. The court's Order setting the Status Conference states:

The court also intends to review the issue of Chapter 12 eligibility. Before the court can confirm a Chapter 12 plan, the court must make a finding that the plan complies with the provisions of Chapter 12 and the other applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1225(a)(1). **One of those provisions is 11 U.S.C. § 101(18), which defines who is a "family farmer" eligible for relief under Chapter 12. Eligibility is a necessary requirement to confirmation of a Chapter 12 plan under § 1225(a)(1). *In re Garako Farms, Inc.*, 98 B.R. 506, 508 (Bankr. E.D. Cal. 1988). The Debtor has the burden of proof to convince the court that the requirements of § 1225 have been met. *Id.* at 509.**

On or before 6/14/23, the **Debtor(s) shall file and serve on the Chapter 12 Trustee a status report together with evidence and legal authority to establish that these Debtor(s) are a "family farmer" as that term is defined in § 101(18)(A).** Said evidence shall include, but not be limited to, documentation which illustrates the nature of and parties to each of the farm related secured debts listed in Schedule D. The parties shall also file and serve evidence to show the terms of any partnership agreements, real property leases, crop sharing agreements or other documents which tend to show who owns and operates the farming operation of the Debtors' property. The Trustee is invited to file his report and analysis regarding the issue of eligibility.

Order Setting Chapter 12 Status Conference, p. 2; Dckt. 10. (Emphasis added.)

At the Status Conference, **XXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee and fewer than all creditors on May 12, 2023. By the court's calculation, 4 days' notice was provided. The court required 4 days' notice. Dckt. 30.

The Certificate of Service, Dckt. 26, indicates fewer than all creditors have been served, however, no "box" is checked to indicate whether these creditors are:

1. Creditors that have filed claims,
2. Creditors holding allowed secured claims,
3. Creditors holding allowed priority unsecured claims,
4. Creditors holding leases or executory contracts that have been assumed, or
5. 20 largest creditors

as required by EDC Form 7-005. From review of the Certificate of Service filed, it appears only registered users of the court's electronic filing system were served. Yet, Movant has not attached a copy of the clerk's electronic service matrix, as required by EDC Form 7-005, therefore, it is unclear if all parties in interest required to be served, were served. At the hearing, counsel addressed these shortcoming.

In light of Creditor having filed an opposition and being in attendance at the hearing, the court waived the deficiency for this Initial Hearing on the Motion.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

REVIEW OF MOTION

Wesley and Ruth Woolery (“Debtor in Possession”) moves for an interim order authorizing the use of cash collateral and requests the court schedule a final hearing to consider entry of a final order authorizing use of cash collateral, granting replacement liens, and approving the proposed Debtor in Possession budget.

Debtor in Possession requests the use of cash collateral to (1) pay post-petition operating expenses incurred in the ordinary course of business; (2) pay costs and expenses of administration of the case; and (3) pay all other amounts as specified in the Debtor in Possession budget. Debtor’s Declaration in support of the Motion states the use of cash collateral is necessary to continue farming operations. Dckt. 23. Upon review of the proposed budget, Exhibit 1, Debtor’s budget is funded by the sale of the following:

Spring 2023 Calves.....\$355,000 generated February 2024

AB Fats.....\$20,000 generated December 2023

Cull Cows.....\$20,000 generated May 2023
.....\$18,750 generated February 2024

MC Fats.....\$7,215 generated monthly, beginning in June 2023

FSA Livestock Forage.....\$90,000 generated July 2023
.....\$75,000 generated September 2023

Equipment Sales.....\$20,000 generated June 2023.

REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

CREDITOR’S OPPOSITION

Creditor Rabo Agrifinance LLC (“Creditor RAF”) filed a preliminary opposition on March 15, 2023. Dckt. 27.

Debtor’s Motion states Creditor holds first-priority lien on substantially all assets, due to a perfected UCC-1 filing, as well as real property located at 42563 Wilcox Road, Hat Creek, California, in the amount of approximately \$1,700,000. Debtor’s Motion, Dckt. 21. Debtor’s Schedules, however, state

under penalty of perjury that Creditor RAF has a secured claim in the amount of \$0.00, supported by collateral in an amount of \$0.00 and unsecured in the amount of \$0.00. Schedule D, Dckt. 1 at 11. Creditor RAF has not yet filed a proof of claim, however, their opposition states Debtor owes approximately \$2,269,868.81 on an Operating Line of Credit and \$496,569.11 on a Real Estate Line of Credit. Opposition, Dckt. 27 at 3:21-22.

Schedule Creditor RAF objects on the following grounds:

1. No Emergency Articulated:
 - a. The Emergency Motion fails to explain why Debtor in Possession must use Creditor RAF's cash collateral on an emergency basis.
 - b. The Motion fails to provide any details regarding the status of Creditor RAF's collateral, or what, precisely, Debtor in Possession would like to sell. The Motion only states Debtor in Possession plans to sale \$20,000 in "Cull Cows."
2. Shortcomings of Budget:
 - a. The budget does not indicate what is truly necessary for Debtor's continued operations.
 - b. The proposed accounting expense is inappropriate because Debtor has not sought approval to employ an accountant.
 - c. It is not clear whether May budgeted items relate to pre-petition obligations.
 - d. Creditor RAF does not know what cash collateral Debtor currently has on hand.

Creditor RAF requests the Emergency Motion be denied or set on full notice so Debtors may file their schedules and provide information necessary for Creditor RAF and the court to evaluate the proposed use of collateral.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the

date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The court has not been provided with enough financial information to determine whether the proposed use of cash collateral is in the best interest of the Estate.

First, Debtor has not yet filed all of their required Schedules. Rather, Debtor has only filed Schedules D and E/F. Even these Schedules appear inaccurate as there are discrepancies with the amount of Creditor RAF's secured claim, as detailed above. The court has no information regarding Debtor's financial information, which is necessary to determine whether to grant the Motion.

Second, the court has no information regarding Debtor's assets as of the petition date. Debtor states the "balance available" after one year of the Debtor in Possession Proposed Budget will be \$334,811:

	Monthly Expenses	Monthly Income	Balance Available
May-23	\$11,717	\$20,000	\$8,283
Jun-23	\$23,467	\$27,215	\$12,031
Jul-23	\$75,667	\$97,215	\$33,579
Aug-23	\$20,667	\$7,215	\$20,127
Sep-23	\$23,167	\$82,215	\$79,175

Oct-23	\$32,917	\$7,215	\$53,473
Nov-23	\$23,167	\$7,215	\$37,521
Dec-23	\$20,667	\$27,215	\$44,069
Jan-24	\$15,467	\$7,215	\$35,817
Feb-24	\$58,967	\$380,965	\$357,815
Mar-24	\$17,967	\$7,215	\$347,063
Apr-24	\$19,467	\$7,215	\$334,811
Total	\$343,304	\$678,115	\$334,811

However, the Debtor has not provided the court with information as to what the balance of cash on hand is currently, nor at the time of filing the petition. The court is unable to determine whether the income generated is necessary for the farming operations.

Third, Debtor has not filed their Schedules A/B or C. Debtor appears to be generating income from the sale of cattle and equipment. The Proposed Budget does not indicate the quantity of herd that will be sold in order to generate the necessary income, the fair market value for the specific type of cattle, and what percent of Debtor's herd they will be selling. Absent this information, the court cannot postulate whether the proposed budget is fair and in the best interest of the estate.

Fourth, as Creditor RAF has stated, Debtor has not adequately described what the "emergency" is. It is not clear why the Motion is set on an emergency basis, and why it cannot be set by the full noticed period, allowing creditors and the court proper time to review Debtor's financial reality, and whether the use of cash collateral is necessary for the continued farming operation.

Fifth, although Debtor states Creditor RAF will be adequately protected, Debtor has not described what the "adequate protection payments the Debtor proposes to pay equal to the accruing interest on the Secured Claims" will be.

Sixth, Debtor's Budget includes a monthly expense of \$500 for "Accounting." If Debtor is using an accountant, the employment and compensation of such must be approved consistent with Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327(a), 328(a), and 330.

MAY 16, 2023 HEARING AND INTERIM AUTHORIZED USE OF CASH COLLATERAL

Counsel for the Debtor in Possession reported that on May 16, 2023, a cattle report to Creditor. There are 658 head of cattle. The Debtor in Possession is providing documentation to Creditor's counsel.

A long, constructive discussion was conducted at the May 16, 2023, Emergency First Day hearing for the use of cash collateral. Counsel for the Debtor in Possession reported that the FSA Livestock Forage are direct payments from the Dept of Agriculture. Other than that, the Debtor in Possession is generating revenues from the sale of Creditor's collateral.

Counsel for the Debtor in Possession advanced the argument that the monies being spent are to not just maintain Creditor's collateral, the herd, but enhance its value. If the revenues to be generated from the sale as show on the budget are accurate, such would be true.

Counsel for the Debtor in Possession also reported that there is very little cash in the bank today for the estate, and the sale of Creditor's collateral is necessary to move forward, care for the herd, and generate increased revenues from the sale of the her.

Counsel for Creditor pointed out that in January 2023 the Debtor reported that there were 687 cows in the herd, but in June that number had dropped to 658 cows in June 2023 - which included 183 new cows just born. Under the agreements in the State Court Receivership Action Debtor was to report any proposed sales to the Receiver and Creditor, and Creditor does not have information about how the herd was reduced between January and June 2023.

The Debtor in Possession and Creditor agreed to authorize the emergency use of cash collateral to pay the necessary expenses to care for and preserve the herd. These are only for post-petition expenses. The Parties will meet and confer to draft an order authorizing the interim use of cash collateral and continue the hearing to 11:30 a.m. on June 8, 2023.

As discussed at the hearing, the order will not authorize the use of cash collateral for expenses not relating to preserving the herd pending further hearings. An example of such is the "Vehicle Payments" listed on the proposed budget. That is for the Debtor's truck and will be addressed later.

The Debtor in Possession, Creditor, their respective counsel, and the court are limited at this point in time, the Schedules and Statement of Financial Affairs not having yet been filed.

The court authorizes the use of cash collateral for May and June 2023 as outlined above for the proposed budget (Dckt. 31).

Counsel for Creditor and counsel for Debtor in Possession shall joint prepare and lodge with the court a proposed order authorizing such use.

June 8, 2023 Hearing

The court's review of the Docket as of June 5, 2023, showed that no further pleadings were filed.

The Debtor in Possession filed Status Conference Report on May 31, 2023. Dckt. 51. In this Status Report the Debtor in Possession states that are no significant Motion to be prosecuted and that the Debtor in Possession intends to timely file a Chapter 12 Plan of Reorganization.

With respect to providing evidence that Debtor was eligible to file a case under Chapter 12, the following is stated:

The creditor meeting in this case is scheduled for June 6, 2023. Debtors are providing the Chapter 12 Trustee various documents which may provide the Trustee the information he requires to make his report regarding Chapter 12 Eligibility. The vast majority of the debt and income in this case is farm related and eligibility issues are not anticipated.

Status Report, p. 2:7-11; Dckt. 51.

Michael Meyer, the Chapter 12 Trustee, provided his Status Report, filed on June 2, 2023. Dckt. 52. The Trustee discusses the delay in Debtor in filing the required Schedules. Additionally, the Trustee states that the Debtor, who is serving as the Debtor in Possession, has not provided various documents, which is preventing the 341 Meeting of Creditors being conducted. These documents, requested on May 9, 2023, include:

- a. Last Two Years Tax Returns
- b. Bank Statements for The Last Six Months.
- c. Business Licenses
- d. Income Statement and Balance Sheets
- e. Insurance Policies
- f. Cash Flow Statements
- g. Copies of the Deed for each property owned or leased by the debtor including details as to acreage and crop status
- h. Production records with respect to growing crops. Corporate and LLC or LLLP documents.
- i. All lawsuits
- j. List of all inventory and equipment with current values dates of purchase and values when purchased
- k. List of all funds, accounts receivables, claims pending escrows, owed to the business at the time of filing.
- l. Any and all permits required to operate the business.

Trustee Status Report, p. 2:10-27; Dckt. 52.

The Trustee notes that the Order Setting the Chapter 12 Status Conference requires the Debtor, serving as the Debtor in Possession, file with the court for the Status Conference evidence showing eligibility to file a Chapter 12 Case, not merely provide it to the Trustee. The court's Order setting the Status Conference states:

The court also intends to review the issue of Chapter 12 eligibility. Before the court can confirm a Chapter 12 plan, the court must make a finding that the plan complies with the provisions of Chapter 12 and the other applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1225(a)(1). **One of those provisions is 11 U.S.C. § 101(18), which defines who is a "family farmer" eligible for relief under Chapter 12. Eligibility is a necessary requirement to confirmation of a Chapter**

12 plan under § 1225(a)(1). *In re Garako Farms, Inc.*, 98 B.R. 506, 508 (Bankr. E.D. Cal. 1988). The Debtor has the burden of proof to convince the court that the requirements of § 1225 have been met. *Id.* at 509.

On or before 6/14/23, the **Debtor(s) shall file and serve** on the Chapter 12 Trustee a status report together with **evidence and legal authority to establish that these Debtor(s) are a "family farmer" as that term is defined in § 101(18)(A).** Said evidence shall include, but not be limited to, documentation which illustrates the nature of and parties to each of the farm related secured debts listed in Schedule D. The parties shall also file and serve evidence to show the terms of any partnership agreements, real property leases, crop sharing agreements or other documents which tend to show who owns and operates the farming operation of the Debtors' property. The Trustee is invited to file his report and analysis regarding the issue of eligibility.

Order Setting Chapter 12 Status Conference, p. 2; Dckt. 10. (Emphasis added.)

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Wesley and Ruth Woolery ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXX**

5. [22-21864-E-11](#) **DAVID FOYIL**
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-28-22 [1]**

5 thru 6

Debtor's Atty: David Foyil

Notes:

Continued from 4/27/23 to be conducted in conjunction with the hearing on the First Amended Disclosure Statement.

Operating Report filed: 5/22/23

The Status Conference is XXXXXXXX
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JUNE 8, 2023 STATUS CONFERENCE

At the Status Conference, **XXXXXXX**

APRIL 27, 2023 STATUS CONFERENCE

The Debtor in Possession filed a proposed Amended Disclosure Statement and Amended Chapter 11 Plan on April 20, 2023. Dckt. 113, 114. The hearing on the Amended Disclosure Statement is set for 11:30 a.m. on June 8, 2023. A review of the Docket in this Case does not reveal any matters which would likely be an issue to address at the April 27, 2023 Status Conference.

6. [22-21864-E-11](#) **DAVID FOYIL** **AMENDED DISCLOSURE STATEMENT**
[DEF-6](#) **4-20-23 [113]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2023. By the court's calculation, 50 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Disclosure Statement is denied.
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REVIEW OF THE DISCLOSURE STATEMENT

Case filed: July 28, 2022

Background: Debtor is a bankruptcy attorney with operations in the regions of Amador, El Dorado, Calaveras, and Sacramento County. Debtor states prior to 2009, Debtor was the primary practitioner in Amador and Calaveras counties for bankruptcy legal services. However, due to economic slowdown, competitors began marketing bankruptcy law services, and Debtor fell behind in marketing strategies, which led Debtor to be less successful in obtaining clients. Debtor has since began working with marketing agencies to retain clients. Debtor anticipates the firm needs to produce an additional \$100,000 per year in net to fund the Plan.

Creditor/Class	Treatment	
Class 1: US Trustee Fees	Claim Amount	\$1,300.58. Proof of Claims 2-1, 3-1, and 4-1.
	Impairment	Unimpaired
	Any U.S. Trustee Fees owed on or before the effective date of the Plan will be paid on the effective date.	
Class 2: Administrative Expense Claims	Claim Amount	~\$1,000
	Impairment	Unimpaired
	Paid in full on the effective date of the Plan in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.	
Class 3: US Bank Trustee, NA, c/o SN Servicing Corporation	Claim Amount	\$778,030.15, secured by the collateral of 130 Poppy Ln, Ione, CA 95640. Proof of Claim 6-1.
	Impairment	Unimpaired
	Paid in full in compliance with all terms and conditions of the security agreement.	
Class 4: Amador County Tax Assessor	Claim Amount	\$\$, secured by the collateral of 130 Poppy Ln, Ione, CA 95640. No proof of claim filed. Debtor's Schedule E/F indicates this claim is unsecured in the amount of \$0.00. Schedule E/F, Dckt. 16. At the hearing, XXXXXXXXXX
	Impairment	Impaired
	Paid in full no later than 24 months after confirmation of the plan together with any interest accrued thereon at the rate set forth pursuant to state law.	

Class 5: Nissan Motor Acceptance Corp	Claim Amount	\$39,388.35, secured by the collateral of 2015 Nissan Armada. Proof of Claim 8-1.
	Impairment	Impaired
	Collateral shall be surrendered to the claim holders. Proceeds from liquidation shall be paid to claim holder and any remaining delinquency shall be treated as a general unsecured claim.	
Class 6: Internal Revenue Service (“IRS”) and Franchise Tax Board (“FTB”)	Claim Amount	<p>IRS - \$1,123,274.22</p> <p>Secured - \$250,647.93</p> <p>Unsecured - \$872,626.29 (\$426,267.40 of which is subject to priority treatment)</p> <p>Proof of Claim 10-1.</p> <p>FTB - \$327,893.08</p> <p>Secured - \$251,973.15</p> <p>Unsecured - \$75,919.93 (\$51,315.05 of which is subject to priority treatment)</p> <p>Proof of Claim 11-1.</p> <p>secured by the collateral of personal property with a total value of \$28,267</p>
	Impairment	Impaired
	The secured portions shall be paid up to the value of the collateral, pursuant to 11 U.S.C. § 506(a), any unsecured portion shall be paid as general unsecured under Class 9.	

Class 7: Unsecured priority claims of: IRS; FTB; and Employment Development Department (“EDD”)	Claim Amount	IRS - \$426,267.40, unsecured priority. Proof of Claim 10-1. FTB - \$51,315.05, unsecured priority. Proof of Claim 11-1. EDD - \$6,206.29, unsecured priority. Proof of Claim 9-1.
	Impairment	Impaired
	Each holder of a priority tax claim will be paid consistent with § 1129(a)(9)(c) of the Code.	
Class 8: United States Bankruptcy Court Sanction	Claim Amount	\$10,000, unsecured claim. Proof of Claim 5-1.
	Impairment	Impaired
	Shall be paid in full no later than 30 months after the confirmation of the Plan.	
Class 9: General Unsecured Claims	Claim Amount	unknown
	Impairment	Impaired
	Shall receive no payment or dividend.	
Class 10: Executory Contracts	Claim Amount	unknown
	Impairment	Unimpaired
	Debtor will assume all executory contracts.	
Class 11: Property of the Estate	Claim Amount	unknown
	Impairment	Unimpaired
	Debtor will retain property of the estate.	

A. C. WILLIAMS FACTORS PRESENT

Y - Incidents that led to filing Chapter 11

First Amended Disclosure Statement, Dckt. 113 at 6-10.

N - Description of available assets and their value

Debtor does not list their available assets. Rather, Schedules A, B, and C, Exhibit A, Dckt. 116.

Y - Anticipated future of Debtor

First Amended Disclosure Statement, Dckt. 113 at 12-13.

Y - Source of information for D/S

Y - Disclaimer

Id. at 6:14-19.

Y - Present condition of Debtor in Chapter 11

Id. at 13-14.

N - Listing of the scheduled claims

Debtor lists some scheduled claims, however, they do not provide the extent and amount of any claims. *Id.* at 15-17.

Y - Liquidation analysis

Id. at 23-24.

N - Identity of the accountant and process used

Y - Future management of Debtor

Id. at 11, 18.

Y - The Plan is attached

First Amended Plan, Dckt. 114.

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS

UNITED STATES TRUSTEE OBJECTION

Tracy Hope Davis, the United States Trustee, (“U.S. Trustee”) files an objection (Dckt. 131) based on the grounds:

1. Failure to Provide Information -

a. The Disclosure Statement fails to:

- i. Provide the amount of priority tax claims or the proposed payment for those claims.

The court notes, although Debtor has failed to provide adequate information regarding the amount of priority tax claims, the court estimates, based on the claims filed, these claims total \$483,788.74.

b. Address Debtor’s Financial Performance:

- i. Debtor’s Plan fails to provide detailed income and expense projections. Rather, it “incorporates” Schedules I and J.
- ii. Debtor’s Monthly Operating Reports indicate less favorable financial performance, with a net income of less than \$2,000 per month. Monthly Operating Report, Dckt. 121. Debtor’s Plan requires Debtor to make payments of:

- (1) Year 1 - \$2,820.24 per month
- (2) Year 2 - \$4,031.57 per month
- (3) Year 3 - \$12,000 per month

- c. Address whether the Plan complies with 11 U.S.C. § 1129(e) as it will not be approved within 45 days of filing the Plan.

UNITED STATES DEPARTMENT OF TREASURY OBJECTION

The United States Department of Treasury (“U.S. Treasury”) filed an objection on May 25, 2023. Dckt. 137. The U.S. Treasury objects on the following grounds:

1. Failure to Provide Information

a. The Disclosure Statement fails to:

- i. Address how Debtor’s principal balance on their home mortgage was reduced by \$500,000 with a fixed interest rate of 5.75%.

2. Failure to Value IRS’s Collateral

- a. Debtor's Disclosure Statement and Plan are based on the assumption that Debtor can value their residence to \$700,000. This value is disputed by the IRS in the subsequent Motion to Value Collateral.

3. **Improper Class 5 Treatment**

- a. The First Amended Plan fails to provide for payment of the U.S. Treasury's claim in full on the effective date of the Plan, as required by 11 U.S.C. § 507, Official Form B 425B, section (III)(C)(2). There is no evidence Debtor can pay sanctions in full on the effective date, therefore, it does not appear feasible.

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams, supra.*

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that

would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is “adequate information” is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

Insufficient Information / Feasibility

11 U.S.C. § 1125(b) requires a disclosure statement to include adequate information. Adequate information need include enough information that would allow a hypothetical investor of a relevant class to make an informed judgment about the Plan.

Here, Debtor has not supplied sufficient information to make an informed judgment of the Plan.

First, although one can sift through the 12 filed proofs of claims, like the court has done, the disclosure statement does not provide the extent and amount of each claim. The disclosure statement simply lists the claims, however, puts the burden on the court and parties in interest to look through the claims filed to determine whether the Plan is feasible.

Second, the Statement does not provide any Debtor’s anticipated plan payments nor Debtor’s net and projected income. The Statement should list the extent of the claims, Debtor’s monthly plan payments, and Debtor’s projected income, so the court can determine if the treatment of the claims is feasible. Debtor states,

Debtor has outlined changes to business units which will result in reduced marketing costs and grow business revenue in a manner to reasonably project the income and expenses (as averages) on Schedule I and J which demonstrate the feasibility to fund the plan.

Motion, Dckt. 113 at 24. It appears Debtor is incorporating their Schedules I and J to demonstrate feasibility. This, again, tasks the court and parties in interest with the burden of sifting through Debtor’s Schedules and comparing them with the claims filed to determine whether the Plan is feasible. Debtor’s monthly net income, documented in Schedule J, is \$1,661.84. Schedule J, Dckt. 36 at 24. As the U.S. Trustee has pointed out, Debtor’s Monthly Operating Report supports Debtor’s net income is less than \$2,000 per month. Monthly Operating Report, Dckt. 121. Debtor states they expect a projected business profit increase of 30 percent in 2023 and 2024. Schedule I, Dckt. 16 at 23.

Debtor does not provide a breakdown of monthly Plan payments and whether they will increase over the life of the Plan. Additionally, Debtor does not provide detailed business profit projections and whether

Debtor has or will have sufficient net income to fund the Plan. It appears with a net income of only \$1,661.84, and a significant amount of secured and priority claims filed in the case, Debtor will not be able to fund the Plan.

Third, Debtor states they have achieved a modification of their home mortgage which reduced the principal balance by \$500,000 and set a fixed interest rate of 5.75%. Disclosure Statement, Dckt. 113 at 13. U.S. Bank Trustee National Association's Proof of Claim 6-1 indicates a secured claim in the amount of \$778,030.15 and a fixed interest rate of 5.75%. It is unclear if this is the reduced amount. Additionally, it is unclear how Debtor achieved the reduced amount and whether the reduction of this creditor's claim caused Debtor to be liable to another creditor.

Forth, the Plan relies on valuing Debtor's real property at \$700,000. As addressed in the Motion to Value Collateral of IRS, the IRS has a genuine dispute as to the value of Debtor's real property. The Statement and Plan do not indicate what occurs if the real property is valued at a higher amount.

11 U.S.C. § 1129(e)

11 U.S.C. § 1129(e) requires a plan to be confirmed no later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with 11 U.S.C. § 1121(e)(3). 11 U.S.C. § 1121(e)(3) allows for extended the confirmation period **only if** (emphasis added):

(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is signed before the existing deadline has expired.

The Plan was filed on April 20, 2023. Dckt. 114. This hearing is occurring 49 days after the filing of the Plan. Debtor has not requested an extension as required above.

11 U.S.C. § 507

On May 31, 2022, United States Bankruptcy Judge Christopher Klein ordered Debtor to pay sanctions in the amount of \$10,000 in the case of In re: ESTATE OF TAPLIN, ERNEST VON. Case No. 21-24148, Order, Dckt. 52. The sanctions were ordered to the Treasurer of the United States within 30 days of the entry of the judgment. The sanctions were related to Debtor filing a bankruptcy case on behalf of a decedent's estate, who is not eligible to be a debtor under any chapter of the bankruptcy code. *Id.*

Under Official Form B 425B, section (III)(C)(2), a holder of a claim specified in 11 U.S.C. §§ 507(a)(1), (4), (5), (6), and (7), each holder of the claim shall receive cash on the effective date of the Plan equal to the allowed amount of such claim. Creditor U.S. Treasury asserts their claim should be treated as the above, however, fails to provide adequate factual assertions as to how their claim fits under one of these five categories.

Motion to Value Secured Claim of the U.S. Treasury

There is a pending Motion to Value the Secured Claim of the US Treasury. Motion DCN: DEF-4; Dckt. 103. Debtor in Possession asserts in the Motion that the value of the real property is \$700,000, and the senior liens secured claims totaling (\$789,819.15). Thus, there is no value in the real property for the U.S. Treasury secured claim.

The Debtor in Possession's valuation is based on Debtor's opinion of value, which is qualified by the statement, "The debtor is not an expert related to the estimation of real property values." Motion, p. 2:16-17; Dckt. 103.

The U.S. Treasury has filed an Opposition asserting that the value of the real property is substantially greater, asserting a value of \$1,089,469.96. Opp.; Dckt. 134. In asserting that value, the Declaration of a Senior Bankruptcy Specialist who is employed by the U.S. Treasury. Dec.; Dckt. 135. He states:

As part of my regular duties as a Bankruptcy Specialist, I evaluate property (primarily real property) and determine values and have done so since 2007. IRS uses these valuations to determine collection related actions

Declaration; p. 1:28 - 2:2; Dckt. 135. The Bankruptcy Specialist then provides his opinion that the value is \$1,089,469.96, and bases this on information and data that is not disclosed to the court. He also notes that this Property was purchased in 2006 (which would be at the height of the real estate boom before the Great Recession and crash in 2007) for \$952,000, and that it likely has increased in value before then.

The Bankruptcy Specialist then tells the court what he has read in the County Assessor's Records of the tax valuation of the real property, but does not provide properly authenticated copies of such documents.

As the court notes in the Tentative Ruling to be posted on the Motion to Value, while an expert may provide an opinion to the court if:

- (a) the expert's scientific, technical, or other **specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;**
- (b) the **testimony is based on sufficient facts or data;**
- (c) the testimony is the **product of reliable principles and methods;** and
- (d) the **expert has reliably applied the principles and methods to the facts of the case.**

Federal Rule of Evidence 702. (Emphasis added.)

While the Bankruptcy Specialist has provided his opinion of the ultimate issue (permitted as provided in Federal Rules of Evidence 704), this court has no way to consider whether such is "based on sufficient facts or data," that is the "product of reliable principles and methods," and if the "expert has reliably applied the principles and methods to the facts of the case."

Providing of opinions of value, whether by an MAI appraiser or other real estate professional, is generally quite simple. The expert prepares an appraisal report which identifies comparable property, makes

adjustments for the condition, location, lot size, size and configuration of the home, and the like, and then gives the opinion of the value based on all the information and methodology properly applied by the expert.

As stated in the Tentative Ruling on the Motion to Value, the U.S. Treasury Opposition states conclusions of value that have been drawn and indicate that discovery (as provided in Federal Rule of Bankruptcy Procedure 9014(c), adopting Federal Rules of Civil Procedure 25, 26, and 28-37, which are incorporated into Federal Rules of Bankruptcy Procedure 7025, 7026, and 7028 - 7037, for Contested Matters.

It appears that until that valuation is completed, or a bankruptcy plan incorporates that litigation, a plan as set forth in the Disclosure Statement cannot be confirmed.

At the hearing, **XXXXXXX**

Based on the above, the Disclosure Statement and Plan fail to provide adequate information to determine whether or not it is feasible. Thus, the Plan may not be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Approval of the Disclosure Statement filed by David Eugene Foyil (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

The Motion for Use of Cash Collateral, Grant Replacement Liens, and Schedule Final Hearing is XXXXXXXXXX

On June 6, 2023, the court issued an order modifying Local Bankruptcy Rule 9014(d) to allow omnibus pleadings respecting first day motions. Order, Dckt. 16. The order authorized Debtor in Possession to file First Day Motions and related documents for the following requests for relief:

1. **BSH-2** - Debtor in Possession's Emergency Motion for an Order (A) Authorizing Interim and Final Use of Cash Collateral; (B) Granting Replacement Liens; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001;
2. **BSH-3** - Debtor in Possession's Emergency Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits, and for Related Relief;
3. **BSH-4** - Motion for Order to approve the Turnover of Funds Held by Receiver Subject to a Reasonable Reserve for Future Fee Applications.

The following deadlines were imposed:

1. Notice of the June 8, 2023 hearing shall be given by 5:00 p.m. on June 6, 2023; and
2. The pleadings and supporting documents for the Omnibus Motions will be filed and served by 4:00 p.m. on June 7, 2023, and a chambers electronic set of the pleadings filed on June 7, 2023 delivered by 4:00 p.m. on June 7, 2023 to the Judge assigned to the case.

At the hearing, XXXXXXXXXX

The Motion to Pay is XXXXXXXXXXXX

On June 6, 2023, the court issued an order modifying Local Bankruptcy Rule 9014(d) to allow omnibus pleadings respecting first day motions. Order, Dckt. 16. The order authorized Debtor in Possession to file First Day Motions and related documents for the following requests for relief:

1. **BSH-2** - Debtor in Possession's Emergency Motion for an Order (A) Authorizing Interim and Final Use of Cash Collateral; (B) Granting Replacement Liens; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001;
2. **BSH-3** - Debtor in Possession's Emergency Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits, and for Related Relief;
3. **BSH-4** - Motion for Order to approve the Turnover of Funds Held by Receiver Subject to a Reasonable Reserve for Future Fee Applications.

The following deadlines were imposed:

1. Notice of the June 8, 2023 hearing shall be given by 5:00 p.m. on June 6, 2023; and
2. The pleadings and supporting documents for the Omnibus Motions will be filed and served by 4:00 p.m. on June 7, 2023, and a chambers electronic set of the pleadings filed on June 7, 2023 delivered by 4:00 p.m. on June 7, 2023 to the Judge assigned to the case.

At the hearing, XXXXXXXXXXXX

The Motion to Approve Turnover is **XXXXXXXXXXXX**

On June 6, 2023, the court issued an order modifying Local Bankruptcy Rule 9014(d) to allow omnibus pleadings respecting first day motions. Order, Dckt. 16. The order authorized Debtor in Possession to file First Day Motions and related documents for the following requests for relief:

- **BSH-2** - Debtor in Possession's Emergency Motion for an Order (A) Authorizing Interim and Final Use of Cash Collateral; (B) Granting Replacement Liens; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001;
- **BSH-3** - Debtor in Possession's Emergency Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits, and for Related Relief;
- **BSH-4** - Motion for Order to approve the Turnover of Funds Held by Receiver Subject to a Reasonable Reserve for Future Fee Applications.

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At the hearing, **XXXXXXXXXXXX**